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Mortgage Electronic Registration Systems, Inc.

11 **UNITED STATES DISTRICT COURT**
EASTERN DISTRICT OF WASHINGTON
12 **AT SPOKANE**

13 JAN M. RENFROE,

14 Plaintiff,

15 v.

16 QUALITY LOAN SERVICE
CORP. OF WASHINGTON *et al*,

17 Defendants.

Case No.: 2:17-cv-00194-SMJ

CITIBANK, N.A., AS
TRUSTEE OF NRZ PASS-
THROUGH TRUST VI'S
MOTION FOR SUMMARY
JUDGMENT

10/9/2020
Without Oral Argument

19 Defendant Citibank, N.A., as trustee of NRZ Pass-Through Trust VI,
20 moves for summary judgment on plaintiff Jan M. Renfroe's quiet title claim

CITIBANK, N.A. AS TRUSTEE OF NRZ - 1
PASS-THROUGH TRUST VI'S MOTION FOR
SUMMARY JUDGMENT
NO. 2:17-CV-00194-SMJ

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1 pursuant to Rule 56, on the grounds there is no genuine issue of material fact
2 and Citibank is entitled to judgment as a matter of law.

3 **I. INTRODUCTION**

4 The Ninth Circuit remanded Ms. Renfroe's quiet title claim due to
5 "significant developments in Washington case law" bearing on the statute of
6 limitations issue Ms. Renfroe's quiet title claim presents. But none of the recent
7 case law developments support Ms. Renfroe's claim Citibank did not timely
8 initiate foreclosure. Prior loan servicer Bank of America, N.A. (**BANA**) served
9 its notice of default and Citibank served its notice of trustee's sale within six
10 years of Ms. Renfroe's default. The court should grant Citibank summary
11 judgment on Ms. Renfroe's only remaining claim.

12 **II. PROCEDURAL HISTORY**

13 **A. The court previously granted summary judgment**

14 Ms. Renfroe commenced this action in 2017, asserting claims for (1)
15 declaratory relief (premised on an alleged DTA violations); (2) injunctive relief
16 (premised on alleged DTA violations); (3) CPA violations; and (4) quiet title.
17 (ECF No. 1-1.) Citibank and MERS moved for summary judgment. (ECF No.
18 4.) The court granted the motion in December 2017. (ECF No. 78.) The court
19 found defendants "acted with proper authority and in compliance with the
20

1 DTA" in awarding summary judgment on the declaratory relief and injunction
2 claims (collectively, the **DTA claims**). (ECF No. 78 at 14-15.) The court
3 found the quiet title claim fails as a matter of law because BANA "timely
4 initiated foreclosure when it sent the 2014 notice of default." (*Id.* at 14-15.)
5 The court granted summary judgment on the CPA claim because Ms. Renfroe
6 "fails to allege facts sufficient to establish a prima facie case for a private [cause
7 of action]." (*Id.* at 18.)

8 **B. The Ninth Circuit remanded the quiet title claim**

9 Ms. Renfroe appealed the court's ruling to the Ninth Circuit. (ECF No.
10 86.) It initially affirmed this court's summary judgment order in its entirety.
11 (ECF No. 94.) But then it revised its opinion to affirm in part and reverse in
12 part. (ECF. No. 100.) It affirmed the court's decision to grant summary
13 judgment on the DTA and CPA claims, but vacated the order granting summary
14 judgment on the quiet title claim. (*Id.* at 2.) The court did so because "[a]fter
15 [this] court issued its order, there were significant developments in Washington
16 case law" bearing on the statute of limitations issue Ms. Renfroe's claim
17 presents. (*Id.* at 4.) The court issued its mandate in August 2019. (ECF No.
18 102.)

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1 **C. Only Ms. Renfroe's quiet title claim remains**

2 Ms. Renfroe moved for leave to amend following the mandate. (ECF
3 No. 109.) Her motion explains "[n]ew facts came to light after filing the
4 appeal" demonstrating Citibank and defendant Quality Loan Service Corp. of
5 Washington (**QLS**) "did not act in good faith" and "[a]dditional facts are added
6 . . . to address the Court of Appeals ruling." (*Id.* at 2.) The court granted the
7 motion in part, instructing Ms. Renfroe to file an amended complaint consistent
8 with the court's ruling by February 17, 2020. (ECF No. 114.)

9 Ms. Renfroe did not file an amended complaint and instead informed the
10 undersigned she would not be amending, and that both Citibank and MERS
11 needed to answer the original complaint. Citibank subsequently filed its
12 answer, answering the allegations in the original complaint. (ECF No. 115.)
13 Citibank answered all allegations in abundance of caution, but based on the
14 Ninth Circuit's order, Ms. Renfroe's quiet title claim—as pled in the original
15 complaint—is her only remaining claim.

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1 **III. STATEMENT OF UNDISPUTED FACTS**¹

2 Ms. Renfroe obtained a \$154,350 loan in 2005. (Declaration of Alan
3 Blunt supporting motion for summary judgment (**Nationstar Decl.**) at ¶6 and
4 Ex. 1.) She executed a note requiring monthly payments beginning in 2006 and
5 continuing through 2035 in connection with the loan. (*Id.*) She secured the
6 loan with a deed of trust on her Oroville property. (*Id.* at ¶7 and Ex. 2.)

7 Ms. Renfroe fell behind on the loan in 2009. (*Id.* at ¶10 and Ex. 5.) BAC
8 Home Loans Servicing, LP (**BAC**) and BANA, as prior servicers, notified Ms.
9 Renfroe of her default and provided an opportunity to cure on several occasions
10 between June 2009 and January 2011. (*Id.* at ¶11 and Ex. 6.) Each letter
11 instructed she must pay the past due amount within thirty days or "the mortgage
12 payments will be accelerated[.]" (*Id.*)

13 Ms. Renfroe continued to periodically remit payments through November
14 2011. (*Id.* at ¶12 and Ex. 5.) BANA applied her most recent payment to the
15 monthly payment due June 1, 2011, *i.e.* the oldest outstanding monthly
16

17 ¹ Pursuant to LCivR 56(c)(1), Citibank separately files a statement of material
18 facts not in dispute specifying the undisputed material facts relied upon in
19 serial, numbered fashion.
20

1 payment. (*Id.*)

2 On June 21, 2013, BANA, as Ms. Renfroe's prior loan servicer, again
3 notified Ms. Renfroe of her default and provided an opportunity to cure and
4 avoid a future acceleration. (*Id.* at ¶13 and Ex. 7.) The letter instructs Ms.
5 Renfroe must pay \$29,364.26 on or before July 31, 2013 to avoid a future
6 acceleration. (*Id.*) This represents the past-due amounts only, *i.e.*, the monthly
7 payments due from July 1, 2011, through the date of the letter. (*Id.*)

8 Ms. Renfroe did not timely cure, so BANA proceeded with foreclosure.
9 (*Id.* at ¶13 and Ex. 5.) BANA served a notice of default on Ms. Renfroe on or
10 about May 9, 2014, then Quality Loan Service Corp., as Citibank's trustee²,
11 recorded a notice of trustee's sale on December 23, 2016. (*Id.* at ¶14 and Exs.
12 8, 9.) Ms. Renfroe obtained a restraining order—from the state court before
13 removal to this court—before the sale occurred. (ECF No. 13-1.) Based on the
14 restraining order and this litigation, Citibank, as the current deed of trust
15 beneficiary, has not yet proceeded to sale. (Nationstar Decl. at ¶15.)

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18 ² Citibank has been the record deed of trust beneficiary since April 2016.
19 (Nationstar Decl. ¶9 and Ex. 4.)
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1 **IV. LEGAL STANDARD**

2 In evaluating a motion for summary judgment, courts must view all facts
3 and draw all inferences in the light most favorable to the nonmoving party.
4 *Kaiser Cement Corp. v. Fischbach & Moore, Inc.*, 793 F.2d 1100, 1103 (9th
5 Cir. 1986). Summary judgment shall be granted if the moving party
6 demonstrates "the pleadings, depositions, answers to interrogatories, and
7 admissions on file, together with the affidavits, if any," show that there is no
8 genuine issue as to any material fact and the moving party is entitled to
9 judgment as a matter of law. *In re Caneva*, 550 F.3d 755, 761 (9th Cir. 2008).

10 **V. ARGUMENT**

11 **A. Citibank timely initiated foreclosure**

12 RCW 4.16.040(1) provides a six-year statute of limitations on promissory
13 note and deeds of trust. When the note is paid installments, the six-year statute
14 of limitations runs against each individual installment when it is due. *4518 S.*
15 *256th v. Karen L. Gibbon, P.S.*, 195 Wn. App. 423, 434, 382 P.3d 1, 6 (2017).
16 However, when a note is accelerated, "the entire remaining balance becomes
17 due and the statute of limitations is triggered for all installments that had not
18 previously become due." *Id.* at 434-35, 382 P.3d at 6. "If the lender elects to
19 accelerate the debt after a breach, the acceleration must be clearly and
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1 unequivocally stated expressed to the debtor." *Wa. Fed. v. Azure Chelan, LLC*,
2 195 Wn. App. 644, 663, 382 P.3d 20, 30 (2016).

3 Ms. Renfroe cannot prevail on her claim the statute of limitations expired
4 before Citibank initiated foreclosure. Ms. Renfroe's loan is due for the July 1,
5 2011 payment. (Nationstar Decl. ¶16 and Ex. 5.) BANA served its notice of
6 default on May 9, 2014—less than three years later. (*Id.* at ¶14 and Ex. 8.)
7 And then QLS, on Citibank's behalf, recorded its notice of sale on December
8 23, 2016—still within six years of the due date. (*Id.* at ¶14 and Ex. 9.)
9 Whichever date the court uses as the date the statute of limitations tolled, the
10 foreclosure was timely, and Citibank was entitled to foreclose on all past due
11 payments. *Edmundson v. Bank of Am., N.A.*, 194 Wn. App. 920, 932, 378 P.3d
12 272, 278 (2016).

13 **B. *Merceri* and *Cedar West* do not help Ms. Renfroe**

14 The Ninth Circuit remanded Ms. Renfroe's quiet title claim noting, after
15 this court issued its summary order, "[t]here were significant developments in
16 Washington case law." (ECF No. 100 at 5.) The court specifically pointed to
17 *Merceri* and *Cedar West* to support its decision to remand. (*Id.*) Neither
18 *Merceri* nor *Cedar West* support Ms. Renfroe's argument.

19 In *Merceri*, the court of appeals held mere default "will not alone
20

1 accelerate the payments due on an installment promissory note . . . [s]ome
2 affirmative action is required by the holder of the note that makes it clear and
3 unequivocal to the payor that the holder has, in fact, declared the entire debt
4 due." *Merceri v. Bank of N.Y. Mellon*, 4 Wn. App. 2d 755, 756, 434 P.3d 84, 86
5 (2018). There, the borrower filed suit to quiet title on October 14, 2016,
6 arguing the lender could not foreclose because the six-year statute of limitations
7 period expired. *Id.* at 757, 434 P.3d at 86. According to the borrower, the
8 limitations period expired because the six-year period began to run upon "upon
9 her failure to cure her default by March 18, 2010," *i.e.*, within the time set forth
10 in the lender's notice of default, which read:

11 If the default is not cured on or before March 18, 2010, the
12 mortgage payments **will be accelerated** with the full amount
13 remaining accelerated and becoming due and payable in full, and
14 foreclosure proceedings will be initiated at that time. As such, the
15 failure to cure the default may result in the foreclosure and sale of
16 your property.

17 *Id.* The court rejected the borrower's argument, finding the lender did not
18 thereafter "take an affirmative action in a clear and unequivocal manner
19 indicating the payments on the loan had been accelerated." *Id.* The lender did
20 not, for instance, declare the entire debt due or refuse to accept installment
payments, but instead sent monthly statements showing the "amount due as
merely the unpaid sum of past due installments, not the full principal." *Id.* at

1 761, 434 P.3d at 88. *Merceri* thus stands for the proposition the statute of
2 limitations did not begin to run when Ms. Renfroe failed to cure her default
3 before July 31, 2013, *i.e.*, within the time provided by BANA's June 21, 2013
4 letter, or when she failed to cure her default within the time provided by the
5 similar letters sent in 2009, 2010 or 2011. They do not help her cause.

6 *Cedar West* does not support Ms. Renfroe's position, either. There, the
7 court of appeals rejected the argument the first missed payment on an
8 installment note triggers the six-year limitations period to foreclose on the deed
9 of trust, explaining it "considered and rejected the same argument" in
10 *Edmondson. Cedar West Owners Ass'n v. Nationstar Mortg. LLC*, 7 Wn. App.
11 2d 473, 483, 434 P.3d 554, 559 (2019). But then it commented *Edmondson* has
12 been interpreted "too broadly to mean filing a notice of default definitively tolls
13 the statute of limitations" and "[w]hen the nonjudicial foreclosure action tolls
14 the statute of limitations is a factual inquiry." *Id.* at 488, 434 P.3d at 562. It
15 held, under the factual circumstances before it, the lender could foreclose on
16 installment payments due on and after November 1, 2010—within six years of
17 the lender recording the notice of trustee's sale, rather than six years from the
18 notice of default—since nothing in the record showed the lender took any steps
19 to pursue nonjudicial foreclosure after transmitting the notice of default. *Id.* at

1 489-90, 434 P.3d at 562-63. *Cedar West* has no application to this case, since
2 Ms. Renfroe's loan is due for the July 1, 2011 payment, and *both* the notice of
3 default (dated May 9, 2014) and notice of trustee's sale (recorded December 23,
4 2016) are within six years of that date. (Nationstar Decl. ¶14 and Exs. 8-9.)
5 Under *Cedar West*, Citibank is entitled to foreclose on all amounts past due.

6 **VI. CONCLUSION**

7 The statute of limitations did not expire before Citibank initiated
8 foreclosure. The court should grant Citibank summary judgment on Ms.
9 Renfroe's quiet title claim—her only remaining claim.

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1 DATED this 19th day of August, 2020.

2 WITHERSPOON • KELLEY

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13 *Trustee of NRZ Pass-Through Trust VI and*
14 *Mortgage Electronic Registration Systems, Inc.*

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on 19th day of August, 2020:

3 1. I caused to be electronically filed the foregoing **CITIBANK,**
4 **N.A. AS TRUSTEE OF NRZ PASS-THROUGH TRUST VI'S MOTION**
5 **FOR SUMMARY JUDGMENT** with the Clerk of the Court using the
6 CM/ECF System which will send notification of such filing to the following:

7 **Robert William McDonald**
8 rmcdonald@qualityloan.com

9 **Robert K. Hunter, Jr.**
10 robert@hunter4law.com

11 2. I hereby certify that I have mailed by United States Postal Service
12 the foregoing document to the following non-CM/ECF participants at the
13 address listed below: **None.**

14 3. I hereby certify that I have mailed by United States Postal Service
15 the document to the following CM/ECF participants at the address listed
16 below: **None.**

17 4. I hereby certify that I have hand-delivered the document to the
18 following participants at the addresses listed below: **None.**

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